Office-Supreme Court, U.S.
FILED
MAY 18 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1694

In the Supreme Court of the United States

OCTOBER TERM, 1982

DENNIS EDWARD COLLIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-1694

DENNIS EDWARD COLLIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the court of appeals erred in reversing the district court's order suppressing evidence obtained in a search of his shoulder bag.

On July 9, 1981, petitioner was charged in an indictment returned in the United States District Court for the Eastern District of Michigan with possession of cocaine with intent to distribute, in violation of 21 U.S.C. 841(a)(1). On December 23, 1981, the district court suppressed the cocaine, which was found in petitioner's shoulder bag after he had thrown it over a fence during an unsuccessful attempt to flee from federal Drug Enforcement Administration (DEA) agents. The ground for suppression was that discovery of the contraband was a fruit of an illegal seizure of his person by a DEA agent during his initial encounter with the agent on June 4, 1981, at the Detroit airport (Pet.

App. 1a-18a). The court of appeals reversed, applying the test for distinguishing seizures from consensual contacts set forth in Justice Stewart's opinion in *United States* v. *Mendenhall*, 446 U.S. 544, 554-555 (1980), and concluding that petitioner had not been seized during his initial encounter with the agent. The court of appeals remanded the case to the district court for a determination whether the conduct of DEA agents during later phases of petitioner's encounter with them — which the district court had found it unnecessary to consider — gave rise to an illegal seizure, and, if necessary to a decision in the case, to consider whether petitioner, in throwing his shoulder bag over the fence, effectively abandoned all interest in the bag (Pet. App. 1a-7a).

Petitioner contends (Pet. 6-15) that the district court applied the correct legal standard to the facts of this case as it found them, and that the court of appeals improperly reviewed those findings de novo rather than under the clearly erroneous standard of review. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court.[1] The court of appeals' decision places petitioner in prescisely the same position he would have occupied if the district court had rejected his contention that his initial encounter with the DEA agent constituted an unlawful seizure. Petitioner is free on remand to pursue his alternative contentions in support of his suppression motion. If that motion is granted his present contentions will be moot. If that motion is denied and petitioner is acquitted following a trial on the merits, his contentions will also be moot. Alternatively, if petitioner's suppression motion is

---

[1]It is now 22 months since the return of the indictment and almost 17 months since the district court's suppression order. Further interlocutory review at this time would cause additional delay in trial of the charges against petitioner.

denied and he thereafter is convicted and his conviction is affirmed on appeal, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

MAY 1983

---

[2]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We note here only that the test for determining whether a seizure has transpired enunciated by Justice Stewart in *Mendenhall*, applied here by the court of appeals, was endorsed by a majority of this Court in *Florida* v. *Royer*, No. 80-2146 (Mar. 23, 1983), slip op. 5-6, 10 (opinion of White, J.); *id.* at 2 (Blackmun, J., dissenting); *id.* at 5 n.3 (Rehnquist, J., dissenting). Because the court of appeals decided only that petitioner's initial encounter with the agents was not a seizure and left open upon remand the question whether subsequent phases of that encounter entailed a seizure of petitioner's person, the court of appeals' decision is fully consistent with this Court's decision in *Royer*. (Indeed, petitioner does not suggest otherwise.) Moreover, on remand the district court will be guided by the teaching of *Royer*. Accordingly, *Royer* provides no occasion for further consideration of the question decided by the court of appeals.

We will file a response on the merits if the Court so requests.